

UNITED STATES BANKRUPTCY COURT

District of Arizona



Choosing Your Chapter

or

**What can bankruptcy do for you?
What will it do *to* you?**

January 2005

IMPORTANT WARNINGS

Neither the Bankruptcy Court nor the Clerk's office can give you legal advice. This pamphlet is not intended to give you legal advice, and is not a substitute for the legal advice specific to your situation that you should obtain from a qualified attorney. To find an attorney who has been certified as a specialist in bankruptcy, you may go to the State Bar of Arizona website at www.azbar.org, click on "Legal Resources" in the top menu bar, then click on "Find a Certified Specialist," and then click on "Bankruptcy."

This pamphlet addresses only the filing of bankruptcy cases by individuals and married couples. It does not address the very different chapters, law and rules that apply to bankruptcy cases filed by corporations, partnerships and LLCs (which, for example, do not get discharges and are not eligible for Chapter 13). If a corporation, partnership or LLC is considering filing bankruptcy, it will absolutely need a lawyer because the law of this Circuit is that such organizations can be represented in court only by a lawyer, not by a nonlawyer individual such as the president of the corporation.

Some individuals may need to file a Chapter 11, perhaps because their debts are too large for them to qualify to file a Chapter 13. This pamphlet does not address Chapter 11 cases, for which an attorney is almost always essential.

Some individuals who are family farmers may be eligible to file Chapter 12. This is rare in Arizona, however, because the debts must be less than \$1,500,000 to qualify for Chapter 12. This pamphlet does not address Chapter 12 cases.

Due to the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the forms currently in use and these instructions will become seriously outdated and incomplete for cases filed on or after October 17, 2005.

Overview. Individuals may have different reasons for filing a bankruptcy case. Often, it is simply to obtain a “Discharge,” which relieves them of some or all of their debts. [Capitalized words in quotes are also explained in the Glossary in the back of this pamphlet.] But sometimes it is as important, or more important, for the individual to use bankruptcy to provide time to cure past defaults. Because of these differing purposes, and others, there are different kinds of bankruptcy cases available.

This pamphlet describes some of the basic differences between the various kinds of bankruptcy cases, known as “Chapters,” to help you decide which kind of filing is most appropriate for you. **But the information provided here is very basic and cannot address all of the issues that may affect you, so it cannot provide you with a definitive answer as to which kind of bankruptcy you should file, if any. For that advice, you should consult a lawyer.**

In all bankruptcy cases, the person filing the case is called the “Debtor.” All bankruptcy cases begin with the filing of a “Petition.” At the same time as the petition is filed, or very shortly after that, the debtor must file extensive “Schedules and Statements of Affairs.” There is a separate pamphlet available that explains how these forms must be filled out. But in *all* cases, it is essential that the debtor fill out these forms and list in them *all* of the debtor’s property and other assets, and all of the debtor’s debts and other liabilities. Failure to list some property or some debt may have very serious consequences, including loss of the discharge or even conviction of a federal crime punishable by up to five years’ imprisonment.

For most individuals, the only real choice is between filing a Chapter 7 or filing a Chapter 13. In both cases a “Trustee” is automatically appointed. Among other things, the

Trustee will examine the accuracy of the debtor's schedules and, if appropriate object to the debtor's discharge. In all cases it is essential that the debtor cooperate with the Trustee, provide the Trustee with all the information and documents the Trustee requests, and abide by all Bankruptcy Rules and court orders. It is also essential in all cases that the Debtor appear at a "First Meeting of Creditors," where the Trustee will question the Debtor about the Schedules and Statement of Affairs.

There are many detailed differences between Chapters 7 and 13, but the most important are as follows:

In a Chapter 7 case, the debtor must turn over to the Trustee all property that is not "Exempt," and if there is no objection the discharge is entered fairly quickly, within a few months of the filing of the case. The Trustee pays creditors only what has been generated by liquidating (selling) the nonexempt assets.

In a Chapter 13 case, the debtor can keep all property including property that is not exempt, but must promptly file a "Plan" that provides for monthly payments to be made to the Trustee from the debtor's "Disposable Income." The Trustee pays creditors out of these plan payments. Such plans last from three to five years, and the discharge is granted only when the plan is successfully completed.

Married couples can file a joint Chapter 7 or a joint Chapter 13. It is often a very difficult decision to make whether it is better for them to file jointly or for only one spouse to file. Advice of a lawyer is essential to making that decision, and this pamphlet does not address it.

See a Lawyer. The decision whether to file bankruptcy may be one of the most important decisions you will ever make. Like surgery, it can restore you to health, but it can also

have very serious consequences. You would not decide to undergo surgery without consultation and advice from an expert, a doctor who specializes in the type of surgery you are facing. Similarly you should not decide to file bankruptcy simply on the advice of a friend or relative, or based on what you've heard about it. You need professional, expert advice, and that means a lawyer, not a document preparer or "paralegal."

Document preparers and paralegals may be able to help you through the process when the critical decisions have been made, just as a nurse assists with medical procedures, but they cannot provide advice on these most important decisions you have to make. They can only act as typists in helping you fill out the necessary forms. They cannot tell you what information to put into the forms. Most importantly, they cannot tell you whether bankruptcy is appropriate for you or will solve your problems. And they cannot tell you whether Chapter 7 or Chapter 13 is more appropriate for you.

Consider Alternatives. And before deciding to file bankruptcy you should also consider alternatives. For example, you should contact your creditors to see if they will agree to a modified payment plan that you can afford. Debt counselors may be able to help you negotiate payment plans, or possibly reduced interest rates, that will help you get out of debt without filing bankruptcy. There are nonprofit organizations that do so without charging a fee up front, because they get paid by an agreement with the credit card companies. Avoid any debt counselor that charges a large up front fee, or whose fee is paid ahead of your creditors. And beware of anyone advertising "credit repair," because there is nothing anyone can legally do to improve your credit history except eliminate errors in your record, and you can do that yourself.

Choice of Chapter. If you do decide to file bankruptcy, the second most important

decision you have to make is which kind of bankruptcy to file, which means which Chapter of the Bankruptcy Code your case is filed under. Like the decision whether to file at all, this decision should also be made with the advice of a lawyer after consultation. Only a lawyer can evaluate your personal situation and select the type of filing that suits your needs. No one else, neither a document preparer nor the court, is qualified to make that recommendation. Filing under the wrong Chapter could have serious consequences – you could lose your home or car, it could cost you much more than necessary, or you could be substantially delayed in getting a discharge and restoring your credit. The cost of a lawyer’s advice is usually much less than the cost of making the wrong choice without a lawyer. Many lawyers will provide an initial consultation for little or no fee.

This pamphlet cannot make any recommendations on which type of bankruptcy filing is best for you. It can only provide some general facts about what each type of filing can accomplish, what it requires, and what it costs. Because there are so many very detailed aspects of the law, however, it is not wise to make this decision without the advice of a lawyer. And almost all of the information given here applies only generally, because there are many details and exceptions that may mean these general rules do not apply to you. Only an attorney can advise whether these general rules actually apply to your situation.

Although there are other Chapters available for different kinds of entities, businesses and farmers, individuals and married couples who file bankruptcy in Arizona usually file only under two Chapters, Chapter 7 or Chapter 13. There are a number of issues that need to be considered in choosing which Chapter to file under. For example, you should consider:

1. Are you eligible?

2. What happens to the property that you own? What can you keep, and what must you turn over to the Trustee?
3. What happens to your debts? Which debts can be discharged, and which cannot?
4. What would you have pay to the Trustee under a Chapter 13 plan?
5. What will be the effect on your ability to obtain credit?
6. How long will each process last, and when will the discharge be entered?
7. How much will each process cost in filing fees and attorney fees?

For some individuals, one of these considerations may outweigh all others so that only one kind of filing makes sense. For most people, however, a combination of factors will influence the choice, and weighing them all together will be a difficult process to arrive at a decision. And for some of these considerations, such as the effect on future credit, there simply is no clear answer. Again, this is where the advice of an experienced attorney is most essential.

1. Are you eligible?

For any bankruptcy case, to be eligible to file in Arizona you must have resided here for the greater part of the 180 days (six months) preceding the filing. In general, this means you must be an Arizona resident for 90 days before you can file here.

a. Eligibility to File Chapter 7. Generally, any person can file a Chapter 7 case. There is no maximum or minimum amount of debt or income to be eligible to file a Chapter 7. However, if you have sufficient “disposable income” (see paragraph 4 below) with which you could make substantial payments on your debts over a three-year period, the U.S. Trustee may seek to dismiss your Chapter 7 case as a “substantial abuse” of the bankruptcy process. If the Court agrees that you could afford to make a substantial payment on your debts

over three years, your Chapter 7 case would be dismissed (without a discharge) unless you converted it to a Chapter 13 case.

b. Eligibility to File Chapter 13. To be eligible to file a Chapter 13 case, you must (1) be an individual or a married couple, not a corporation or partnership, (2) have a regular income, (3) have unsecured debts of less than \$307,675, and (4) have secured debts of less than \$922,975. All four requirements must be satisfied, and you may need a lawyer's advice to determine whether you qualify under any of them other than the first.

"Regular" income means a cash flow, from any source, that is sufficiently regular and reliable to fund monthly payments under a three to five-year plan. "Secured" debts are debts for which the creditor can take your property ("collateral") if you fail to pay, such as a home mortgage or car loan. "Unsecured" debts are those for which none of your property is directly responsible. So, for example, your credit card debts and medical debts are generally unsecured debts and they must total less than \$307,675. Your secured home mortgages and car loans must total less than \$922,975 for you to be eligible to file a Chapter 13 case. These dollar limits will be adjusted on April 1, 2007, and on the same date every three years thereafter, so you should check a current version of 11 U.S.C. § 109(e) for the current amounts after April 1, 2007.

For purposes of the debt limitations for Chapter 13 eligibility only, do not count debts that are "contingent." A contingent debt means a debt that requires some other event to occur before you actually owe the debt, such as a guarantee of someone else's debt when that person has not defaulted. Second, do not count debts that are "unliquidated," which means the amount due cannot be calculated. For example, liability for a car accident that you caused may be unliquidated until a jury has determined the amount of damages, unless those damages (such as

incurred medical expenses) can be easily determined with certainty. But if the amount due can be calculated, it is not unliquidated simply because a lawsuit must be resolved before your liability for the debt is determined. Determination of whether a debt is contingent or unliquidated is often difficult and may require an attorney's advice. Such contingent and unliquidated debts must still be listed in your schedules, but they do not count toward the eligibility limits.

2. What assets can you keep? Under both Chapter 7 and Chapter 13, you can keep assets that Arizona law defines as “**exempt.**” Often this means you can keep your house and car under either Chapter, but for a more detailed list of exempt assets, the value limitations and the requirements for keeping them, see the pamphlet on Arizona exemptions.

All other assets, the nonexempt assets, must be turned over to the trustee in a Chapter 7 case. The trustee sells them to generate cash to pay to creditors. One asset that debtors often forget about is a tax refund that is received after the case was filed, but that was generated out of income earned before the case was filed. Such refunds must be turned over to the Chapter 7 Trustee, and failure to do so may result in a judgment against you for that amount and denial or revocation of your discharge.

Under Chapter 13, however, debtors can generally keep all of their nonexempt assets, but must make payments under a plan that total at least the value of the nonexempt assets that are kept. “Value” here means the value in excess of any debt that is secured by the asset (*i.e.*, the amount of the debtor's “equity” in the asset).

Therefore, if you have an asset that you want to keep and that is not among the exempt assets, you may want to file Chapter 13. This permits you to keep that asset, but you must pay

its equity value into the plan. You could instead file a Chapter 7, turn the asset over to the Trustee, and buy it back from the Trustee for fair market value. But this would generally require a cash payment, and the Trustee can sell to anyone who offers more than you do, whereas the Chapter 13 plan essentially allows you to buy back the nonexempt assets by making payments over three to five years.

Importantly, you cannot “keep” any assets by transferring them to a friend or relative before filing bankruptcy. The Trustee may recover, for the benefit of your creditors, any asset that you transferred *either* with an intent to prevent your creditors from reaching it, *or* for which you did not receive reasonably equivalent value in return, while you were insolvent. And if the Trustee does recover such a transferred asset, it will be liquidated for the benefit of your creditors even if you could have claimed it as exempt if you had not transferred it. In short, you generally lose your right to claim an exemption by transferring an exempt asset before filing bankruptcy. **In addition**, you may lose your right to a discharge by making such a transfer, regardless of whether the asset was exempt or not exempt.

The Trustee can also recover certain payments you made on pre-existing, unsecured debts. Such payments may be avoidable preferences, and the Trustee can sue the person you paid to recover them, for the benefit of your creditors. This applies to certain payments made on unsecured debts while you were insolvent and made within ninety (90) days (three months) before the filing of bankruptcy, or made within one (1) year before filing if the person you paid was an “insider,” such as a relative of yours. Preference law is extremely detailed and complex, and you should consult an attorney if you have a concern about any such payment.

3. What debts must you pay?

a. **Secured Debts.** Under both Chapter 7 and 13, you must pay debts that are secured by property if you want to keep the property. Most commonly, this means ***you must keep making your regular monthly payments on your home mortgage*** if you want to you're your home. You also must maintain insurance on your home and car, and provide your lender proof that the lender is named as an additional loss payee on the insurance policy.

Sometimes secured creditors refuse your attempts to pay them, perhaps feeling that accepting payments might violate the automatic stay against creditor attempts to collect their debt. If this happens **do not spend the money earmarked for such payments.** Retain the money until the trustee or Court can address the situation. You could well then be directed to make a lump sum payment to that creditor, using those funds.

Chapter 13 can be used to cure defaults on secured debts, including defaults on home mortgages and motor vehicles. But the amount of the home mortgage debt and the amount of each month's payment generally cannot be modified in either Chapter 7 or 13. So, if you are some months behind on your mortgage payments, you could file Chapter 13 and catch up on the payments by making a regular monthly payment each month plus an additional amount that will, over the term of the Chapter 13 plan, total the amount of the payments you have missed, plus interest. Chapter 7 does not provide this opportunity to cure defaults, and even Chapter 13 does not provide time to cure defaults in payments that come due after the filing of the bankruptcy case; **such post-filing payments must be kept current, even if you have not been billed for them.**

In Chapter 13 the amount you have to pay on a car loan may be modified if the current

value of the car is less than the amount you owe on it. In Chapter 13, this reduced amount may be paid over the term of the plan. In Chapter 7 you may redeem your exempt car for its current value, even if this is less than you owe, but this requires an immediate cash payment of the full amount unless you can find another lender to refinance it.

These differences between Chapters 7 and 13 create two of the most common reasons people who need to file bankruptcy choose to file Chapter 13 instead of Chapter 7: because they have fallen behind on home mortgage payments and need time to cure the defaults, or because they want to reduce the amount they have to pay to keep their motor vehicles, if their current value is less than the amount owed.

b. Nondischargeable Debts. Under both Chapter 7 and 13, most unsecured debts can be discharged, but there are some debts that you cannot escape, called “nondischargeable debts.” For example, both Chapters will generally permit you to discharge credit card obligations, medical debts and other unsecured loans, but neither Chapter will excuse you from paying spousal maintenance, child support, taxes incurred within 3 or 4 years before filing, or most student loans. The Glossary at the back of this pamphlet gives a more complete listing of the kinds of debt that may be nondischargeable. There are very detailed and sometimes complex requirements about which debts can be discharged and which cannot, for which you should consult a lawyer. If a creditor challenges your right to a discharge or asserts that the particular debt is not dischargeable, you will almost certainly need a lawyer to represent you in Court in order to obtain the discharge.

However, Chapter 13 permits the discharge of some debts that cannot be discharged under Chapter 7. The principal debts that can be discharged in a Chapter 13, but that cannot be

discharged in a Chapter 7, are debts incurred through false representations or fraud, consumer debts for luxury goods, and debts arising from a breach of fiduciary duty, embezzlement, or willful and malicious injury. Only a Chapter 13 plan can result in the discharge of these kinds of debts. Therefore the existence of such a debt is one reason some people who need to file bankruptcy choose to file Chapter 13 rather than Chapter 7. And, you might have to pay more into a Chapter 13 plan to discharge debts of this kind than you would have to pay if you were not seeking to discharge such a debt. If you have a debt of this kind, or a debt that a creditor might claim to be of this kind, it is particularly important that you seek the advice of a lawyer before deciding to file bankruptcy, and certainly before selecting which Chapter to file under.

Even though most tax liabilities that arose less than 3 or 4 years ago are not dischargeable in either Chapter 7 or Chapter 13, they still may provide a reason for some people to choose Chapter 13 rather than Chapter 7. Such tax liabilities will have to be fully paid by the Chapter 13 plan, which lasts for a minimum of three years and a maximum of five. But during that time interest will stop accruing on the tax liability if the taxing authority has not asserted a lien against your property before you filed bankruptcy. Consequently it will cost you less to repay the nondischargeable tax liability through a Chapter 13 plan than it would cost you to repay it over time if you filed a Chapter 7 case or filed no bankruptcy at all.

c. Possibly Dischargeable Debts. Two particular kinds of debts are dischargeable in a Chapter 7 case only if you can prove to the Court that it would be an undue hardship on you if the debt were not discharged. These debts are most student loan obligations and obligations arising from property settlement aspects of a divorce or separation decree. There are detailed and complex rules about the kind of proof you must present to the Court, and the

manner in which it is presented, in order to obtain the discharge of a debt of this kind. You will almost certainly need a lawyer to represent you in Court if you seek to discharge a student loan debt or a debt arising from a divorce decree. And, if the Court finds that the divorce decree debt is in the nature of spousal maintenance or child support, it will not be dischargeable regardless of the hardship this causes. This also may be a complex legal issue that you will need a lawyer to handle.

The dischargeability of student loan debts is the same in Chapter 7 and Chapter 13, and the nondischargeability of spousal maintenance and child support debts is the same in Chapter 7 and 13, so the existence of such debts does not really provide a reason to choose one chapter over the other. However, debts arising from the property settlement aspects of a divorce or separation decree may be discharged in a Chapter 13 even if they could not be discharged in a Chapter 7, so such debts may provide a reason to file Chapter 13 rather than Chapter 7.

4. What must you pay to the Court or Trustee? In Chapter 7, you need only pay the filing fee to the Court (currently \$209), and turn over to the Trustee all of your nonexempt assets. Note that this obligation to turn over nonexempt assets generally includes the obligation to turn over to the trustee any tax refunds you receive after the case is filed, if the refunds derive from taxes that were withheld from your wages earned before the case was filed.

In Chapter 13, you will need to pay a filing fee (currently \$194) plus file a plan that provides for monthly payments to the Trustee for a minimum of three years, and sometimes as long as five years. You must begin making these plan payments within 45 days of the filing of the bankruptcy case. The monthly plan payments are generally the amount of your monthly “disposable income,” which usually means the amount of your take-home pay minus your

necessary living expenses for yourself and your dependents. The Chapter 13 Trustees have guidelines for appropriate living expenses by family size and may challenge your claimed expenses if they exceed these amounts. Over the term of the plan, these plan payments must also total the value of all nonexempt assets that you keep. They must also total the amount of all secured claims that are being paid through the plan, plus the amount of all priority claims, which generally includes all tax obligations incurred within three or four years before the filing of the bankruptcy case and all overdue spousal maintenance and child support obligations. You will almost always need to consult a lawyer to calculate the amount of your disposable income, to calculate what must be paid each month on secured and priority claims, to determine the amount that you must pay each month into a Chapter 13 plan, and to determine the length of the plan, which may vary from three to five years.

For many debtors this means they will pay much more under a Chapter 13 plan than they would pay to a trustee in a Chapter 7 case, especially if they have little value in nonexempt assets. But such people may choose to pay that greater amount so that they can use Chapter 13 to cure defaults in order to keep their home or car, so that they can pay past tax obligations over time without additional accrued interest, so that they can discharge certain debts that would not be dischargeable in a Chapter 7, or because they have sufficient “disposable income” to make the filing of a Chapter 7 case objectionable by the U.S. Trustee as a “substantial abuse.”

5. What is the effect on your credit? The Fair Credit Reporting Act permits credit agencies to reflect a bankruptcy on your credit report for ten years after the date of filing. Credit reports must also reflect which Chapter you filed under. Some people feel that a Chapter 13 filing reflects better on your credit report than a Chapter 7 filing, because it indicates an effort to

repay some of your debts over time. Others feel that the Chapter you filed under makes no difference, and that the more significant effect on your credit is whether you have already received your discharge. A discharge under Chapter 7 is usually granted within about 4 months after the filing, but the discharge under Chapter 13 is not granted until you complete all payments due under your plan, which is a minimum of three years and may be as long as five years.

Government agencies may not discriminate against you because you have filed a bankruptcy case, but lenders may take your bankruptcy filing into account in deciding whether to grant you credit at all, or in determining what interest rate you will have to pay to borrow money. Most people believe the filing of a bankruptcy case will mean that you must pay significantly higher interest rates to obtain a credit card, a car loan or a home loan for many years after the case is over.

6. How long will each case last? Chapter 7 cases are often concluded in a few months, possibly as early as about four months when a discharge is granted. They can take longer, however, if a creditor objects to your discharge, or to the discharge of that creditor's debt, or if the Trustee needs to take action to recover assets that could be used to pay your creditors.

A Chapter 13 plan must last for a minimum of three years, and with cause may be extended to five years. Usually debtors do not file plans longer than three years unless they need more time to make full payment on secured or priority debts, such as certain tax obligations or spousal maintenance or child support. The discharge in a Chapter 13 case is not granted until you have completed all payments under the plan.

7. How much will each cost in filing fees and attorney fees? The filing fee for a

Chapter 7 is \$209. The filing fee for a Chapter 13 is \$194.

Attorney's fees are not set by law or by the Court, but are subject to the market, the nature and amount of service provided, and the agreement of the parties. Some attorneys offer flat fees, while others charge by the hour.

Attorney fees for a Chapter 7 filing are generally much lower than for a Chapter 13 filing. However, attorney fees for filing a Chapter 7 case are generally required to be paid in full before the filing, whereas many lawyers will agree to have their fees for a Chapter 13 case to be paid over time under the Chapter 13 plan. As a result, the total amount you must pay a lawyer before your Chapter 13 case is filed is often very close to the amount you would have to pay to file a Chapter 7 case. And the balance of the lawyers' fees for a Chapter 13 case is usually paid out of payments that you make to the trustee under your repayment plan, so it effectively comes from money that would otherwise be paid to your creditors.

Regardless of which Chapter you file under, you should clearly understand whether your fee agreement includes your attorney's appearance with you at the first meeting of creditors, a defense if the U.S. Trustee seeks to dismiss your case for substantial abuse, a defense if a secured creditor moves for relief from the automatic stay so that it can foreclose, or representation if a creditor opposes your discharge or the discharge of that creditor's debt. Many lawyers' fee agreements provide that such defenses (other than appearance at the first meeting of creditors) are additional and subject to another agreement for additional fees, possibly on an hourly basis even if there is a flat fee for the basic representation. You should discuss with your lawyer the likelihood of the need for such additional representation and what it might cost.

Glossary of Terms

Bankruptcy Code. Almost all bankruptcy law is federal, and is found in Title 11 of the United States Code, which is known as the Bankruptcy Code. This means that bankruptcy law is generally the same throughout the United States. About the only aspect of bankruptcy law that is found in state law are the “exemptions,” which in Arizona are found in Arizona Revised Statutes (“A.R.S.”) § 33-1101 through § 33-1153.

Bankruptcy Rules. The details of what must be filed in a bankruptcy case, and the deadlines for filing, are generally found in the Rules of Bankruptcy Procedure, known generally as the Bankruptcy Rules. In addition to these rules there are also deadlines and other requirements established by the Arizona Local Rules and by General Orders issued by the Arizona Bankruptcy Court. These may be found on the Court’s website located at www.azb.uscourts.gov.

Chapter. The Bankruptcy Code has different Chapters for different kinds of cases and debtors. For example, Chapter 7 governs liquidation bankruptcy cases, whereas Chapter 13 governs individual cases where there is a three to five-year plan to repay a portion of the debts.

Code. In bankruptcy cases, the “Code” usually refers to the “Bankruptcy Code,” although there are other federal codes such as the Internal Revenue Code.

Collateral. Property pledged as security for a debt. In the event you default on a loan or other obligation, the property pledged as collateral may be sold, with the proceeds used to pay off the debt.

Contingent Debts. Debts that are not yet due because some other event must occur before you must pay the debt. The most common contingent debt is a guarantee of someone else’s debt,

which is contingent until the other person defaults. Contingent debts are not counted in determining whether you are under the debt limits to be eligible to file a Chapter 13 case, but otherwise must be scheduled and dealt with in a bankruptcy case like any other debt.

Creditor. A person or company to whom you owe money. For example, a credit card company is a frequent creditor in bankruptcy cases.

Debtor. A person who owes money, or a person who has filed a bankruptcy case.

Discharge. A discharge is a court order stating that you have been relieved of your obligation to pay your dischargeable debts. In a Chapter 7 case the discharge is granted after passage of the deadline for creditors to object to the discharge, which is generally 60 days after the date first scheduled for your first meeting of creditors. In a Chapter 13 case the discharge is granted only after you complete all payments called for by your plan. Once a discharge is granted, creditors are generally forbidden from attempting to collect any unsecured debt: they may not make demands for you to pay nor may they file suit.

Dischargeable debts. Debts that may be discharged under a particular Chapter of the Bankruptcy Code. All debts are dischargeable unless a specific provision of the Bankruptcy Code defines them as nondischargeable. Some debts are automatically nondischargeable, such as those for child support and spousal maintenance. Some debts, particularly tax debts, are dischargeable only if they were incurred three or four years before the filing of your bankruptcy case. Some debts are nondischargeable unless the debtor files an adversary proceeding against the creditor and proves to the Court that it would be an undue hardship not to discharge the debt, such as student loan debts and some debts arising from property settlements in a divorce. Some debts are dischargeable unless the case is a Chapter 7 case and a creditor, within 60 days after the

date first set for your meeting of creditors, files an adversary complaint seeking to have the debt declared nondischargeable. These kinds of debt include those arising out of fraud, false written financial statements, luxury purchases and cash advances on a credit card shortly before the bankruptcy filing, embezzlement, breach of a fiduciary duty, willful and malicious injury and drunk driving. In all cases the discharge of the debt only relieves the debtor of personal liability for the debt; it does not eliminate any mortgage or security interest in the debtor's property that the debtor granted to a lender.

Disposable Income. This basically means what is left from your take-home pay after paying for the basic necessities of life such a home mortgage payment or rent, car payment, utilities, food, insurance and care for your dependents. It is the amount that could be paid to creditors each month to reduce your outstanding debts.

Exempt assets and exemptions. Property that, under the Bankruptcy Code and Arizona law, you may keep and do not have to turn over to a Trustee under any Chapter. See the separate pamphlet on exemptions for a listing of these assets and the dollar limits of the exemptions. Such assets are also protected from judgment liens, and such liens often can be eliminated in a bankruptcy case. But if you have voluntarily granted a lien, security interest or mortgage against such an otherwise exempt asset, you must pay the lender the amount of the debt or else the lender can foreclose against the property.

First Meeting of Creditors. A meeting that all debtors must attend, where they take an oath and answer questions posed by the Trustee or U.S. Trustee about their property, debts and financial affairs. The first meeting of creditors is scheduled by the U.S. Trustee, and the debtor and all creditors will be given notice of the date, time and place of the meeting. An unexcused failure of

the debtor to attend usually results in dismissal of the bankruptcy case. The first meeting of creditors is also often called the “341 meeting,” due to the provision of the Bankruptcy Code that requires it.

Judgment liens. Claims that a creditor may have against specific property that you own arising from a lawsuit and judgment against you plus some action to make the judgment enforceable against your property, either by recording the lien with the County Recorder to make it effective against real property that you own such as your house, or by having a sheriff levy against personal property such as a motor vehicle. Judgment liens may be avoided in a bankruptcy case if they are against property that is “exempt.” Voluntary liens that you have granted, such as security interests and mortgages, are not judgment liens and may not be avoided simply because they are against exempt property.

Nondischargeable Debts. See “Dischargeable Debts.”

Plan. In a Chapter 13 case, the debtor must file a plan that specifies how secured and priority debts will be paid, how much disposable income the debtor will pay to the Trustee each month, how long the plan will last (from a minimum of three to a maximum of five years), and shows how the plan will pay at least as much to creditors as they would receive in a Chapter 7 case. The Plan must be filed within 15 days of the filing of the petition unless an extension is granted, and failure to do so usually results in dismissal of the case. The debtor must begin making payments called for by the plan within 30 days of the filing of the plan.

Priority Claims. Certain unsecured claims in a bankruptcy case are defined by the Code to be priority claims. These include attorneys’ fees incurred after the filing, spousal maintenance and child support obligations incurred at any time, and tax claims incurred within three or four years

before the filing. In both Chapter 7 and Chapter 13, priority claims are paid first, before any payment may be made on nonpriority unsecured claims. In a Chapter 13 case, the plan must provide for the full payment of all priority claims.

Reaffirmation of Debts. A debtor may reaffirm a debt, which means the debtor remains liable for the debt even after the debtor's other debts have been discharged. Such reaffirmation agreements must be made before the discharge is entered, and must allow the debtor to rescind them within 60 days. If the debtor is not represented by an attorney, the agreement is not enforceable unless approved by the Court, and to approve it the Court must find that the agreement is in the debtor's best interest and does not impose an undue hardship.

Schedules and Statements of Affairs. The debtor must file extensive schedules, which must list all of the debtor's property and debts, and statements of affairs, which answer many questions about the debtor's financial affairs. See the separate pamphlet on what these require. They must be filed within 15 days of the filing of the petition. Failure to file them on time usually results in dismissal of the bankruptcy case.

Secured debts. Debts for which the creditor can look to some specific property you own to collect if you do not pay the debt. Car loans and home mortgages are the most common kinds of secured debts, while credit card debts and medical debts are generally unsecured. A debt can also be a secured debt if the creditor has obtained a "judgment lien" against some of your property.

Trustee. In both Chapter 7 and Chapter 13 cases, a Trustee is appointed by the Court to supervise your bankruptcy case. In a Chapter 7, the Trustee collects your nonexempt assets, sells them and distributes the money to creditors. In a Chapter 13, the Trustee reviews your plan,

makes recommendations for changes, objects to the Court if it does not meet all of the legal requirements, and receives your plan payments and turns them over to creditors as provided by the plan. In both Chapters it is important that you cooperate with and provide full and complete information to the Trustee, or else he may object to your discharge.

United States Trustee. An office of the executive branch of the federal government that oversees bankruptcy cases, appoints Trustees and oversees the performance of Trustees. It is the United States Trustee who may object to your Chapter 7 filing if you could make substantial payments on your debts under a Chapter 13 plan. The United States Trustee is not the Trustee in your individual case.

Unliquidated debts. Debts for which the amount of the liability cannot be determined before a trial has determined the amount of damages. But if the amount can be calculated, the debt is not unliquidated simply because a trial is necessary before your liability is determined. Unliquidated debts are not counted in determining whether you are under the debt limits to be eligible to file a Chapter 13 case, but otherwise must be scheduled and dealt with in a bankruptcy case like any other debt.

Unsecured debts. Debts that you owe and for which the creditor cannot foreclose or repossess any of your property if you fail to pay. Most credit card debts and medical debts are common unsecured debts, unless the creditor has obtained a “judgment lien.”